

A New Castle City Board of Adjustment Hearing took place on June 6, 2007 at 7 p.m. in the City of New Castle's Town Hall.

Present: Mayor John F. Klingmeyer
David Athey, City Engineer
Roger Akin, City Solicitor

Mayor Klingmeyer called the meeting to order at 7 p.m.

The Mayor read the Notice of Public Hearing that states, "An application has been filed by St. Anthony's Club for property located at 1017 Gray Street, 1006 & 1008 School Street, New Castle, Delaware, parcel numbers 2101400185, 2101400195, and 2101400196, seeking a special exception for the existing private club under Section 230-18 B.(3) of the zoning code and seeking a variance from the following setback and bulk requirements: for parcel number 2101400185 which includes the club building: 1. along School Street; front setback from the specified 20 feet to 6.5 feet for the existing building. 2. Along the north side; side yard from the specified 10 feet to a side yard which varies from 5.5 feet to 6.9 feet. The 5.5 feet accommodates the proposed small addition of 120 square feet and the existing building is as close as 5.7 feet. 3. Along Gray Street; front setback from the specified 20 feet to 15.8 feet for the existing building and 11.8 feet for the existing covered steps. 4. Along the south side; side yard from the specified 10 feet to a side yard which varies from 9.3 to 9.8 feet for the existing building. 5. From the building bulk specified of 50 percent to 57 percent for the existing building of 7,575 square feet and a proposed de minimis addition of 120 square feet for a total building area of 7,695 square feet total. The addition does not reduce the number of parking spaces. For parcel number 2101400196: 6. Along the unopened area of Young Street; front setback from the specified 20 feet to 0 feet for a proposed pavilion cover for two existing bocce courts. For the purpose of considering this application, the Board of Adjustment will hold a public hearing on Wednesday, June 6, 2007, at 7 p.m. in Old Town Hall, 2nd floor, located at 201 Delaware Street, New Castle, Delaware."

An affidavit of publication from the New Castle Weekly was posted on May 23, 2007 and an affidavit from the News Journal was published on May 22, 2007.

City Building Inspector Mr. Bergstrom provided a background. This is a special exception; the property is currently located in the R3 district where clubs and lodges are permitted as a special exception but not as a matter of right.

(All parties who will be testifying this evening were sworn in.)

Mr. Andrew Taylor, counsel for St. Anthony's Club, spoke on their behalf. He began with the vote on special exception. Ordinance 431 was approved in July 2006 authorizing the Board of Adjustment to grant special exception within a residential district (R3) for private clubs and lodges. Section 230-18 B.(3) seeking special exception from the BOA to allow the private club to exist in the R3 district. Mr. John Ioannoni presented a history of the club. They feel the granting of the special exception will not have any adverse effect on public interests. There were no questions from the Board. **Mr. Athey made a motion to approve the special exception for the private club in the R3 zoning district in accordance with Section 230-18 B.(3). Mr. Akin seconded the motion. The motion was passed unanimously.**

(It was noted for the record that the special exception provision in the zoning code requires the Board of Adjustment to make a finding that it is empowered under that section of the zoning code to grant such an exception. The Board does have that jurisdiction.)

Items 1-5 were reviewed. Mr. Ioannoni explained the purpose of the addition noted in number five. First for storage and to be used as an entrance for deliveries. Most of the building was in existence before modern zoning took effect in New Castle. The variances being requested are to make sure that what exists has been approved and for seeking approval for the small addition to the building.

Mr. Raymond Mancini questioned where the new addition will be located. His concern was with delivery trucks; his home is next door.

Mr. Felix Susi, treasurer of St. Anthony's, disputed Mr. Mancini's concerns. *(Discussion followed.)*

Mr. Taylor summarized by stating that because of the age of the building the literal enforcement of the code would create a hardship on the club if they had to modify the building to meet the current zoning setbacks. They recognize they are in a residential neighborhood and the special exception that was approved allows the club to be there but it does lead to special circumstances/conditions that make it peculiar with the club being there.

Mayor Klingmeyer proposed to separate the existing buildings as a motion from the proposed building for the purpose of granting a variance. *(Discussion followed.)*

Mr. Joseph J. DiAngelo explained that over the years the club tried to get additional storage. They were informed they needed to go before the Board of Adjustment. Council reviewed this and adopted a new code to allow clubs provided they did not use any additional parking. This addition does not take any additional parking spaces.

Mr. Athey made a motion to grant the applicant a variance from the front setback of 20 ft. to 6.5 feet along School Street; along the north side a side street variance from the specified 10 ft. to between 6.9 ft. and 5.7 ft.; along Gray Street the front yard setbacks specified 20 ft. and 11.8 ft.; along the south side of the building the side yard specified 10 ft. to a variance between 9.3 ft. and 9.8 ft. and the building bulk specified 50% to 7,575 square feet. Mr. Akin seconded the motion. Board members expressed their rationale. Mr. Akin voted in favor of granting the motion on the table stating that special conditions clearly exist. The structure preexisted the modern zoning code. This is not a situation where a developer is seeking a variance for a new structure to be built on the property. He also believes that literal interpretation of the provisions of the Zoning Code of New Castle would deprive the applicant of property rights because if the city were to insist on enforcing the full setback requirements much of this structure would need to be demolished. He further stated that he does not believe the special conditions of an existing structure that may violate modern setbacks was something that were created by the applicant because much of the building was built prior to the modern zoning code. Lastly, he does not believe granting variances for requests 1, 2, 3, 4, 5 will provide to this applicant any special privilege denied to other

lands in the same district. Mr. Athey and Mayor Klingmeyer voted in favor of the motion citing the same explanation as Mr. Akin. The motion was approved by unanimous vote.

Mr. Taylor then asked Mr. Ioannoni to further explain why the club is requesting an additional room. Mr. Ioannoni said it is mainly a safety issue and also for convenience. Current deliveries come through the front entrance and contact with the public is present. Mr. Susi added that current storage is limited and additional storage space (120 sq. ft.) is needed. *(Discussion about the size of the addition took place.)*

Mr. Athey stated that it is the Board's hope that the club will be proactive as they stated concerning deliveries and be sensitive to Mr. Mancini's property rights and concerns.

Mr. Athey made a motion to grant a variance on the north side of the building from the specified 10 ft. to 5.5 ft. to accommodate the no larger than 120 sq. ft. addition and the proposed building bulk from the specified 50% to include no greater than 120 sq. ft. which would bring the building total to 7,695 sq. ft.

Mr. Akin seconded the motion. Board members expressed their rationale.

Mr. Akin voted in favor of the motion and stated that the Board has been informed the addition is as small as it can be and still serve the purpose for which the applicants intended. He believes the northern edge of the new structure will follow along or be a continuation to the building line that is already in the setback area. Bringing supplies through the front door may cause problems for those already inside which is a special circumstance. He does not believe the applicants have a right to the structure as a matter of right but he does believe they have explained satisfactorily special circumstances regarding deliveries that make the addition a suitable solution. He did express concern with the testimony of the neighbor to the northwest concerning delivery trucks obstructing the area in front of his home and the owners have said they will do their best to instruct delivery companies to be sensitive to

Mr. Mancini's concerns. Mr. Athey voted in favor of the motion citing Mr. Akin's statements and adding he liked the de minimis addition and going on the good faith of the applicant that they will be sensitive to their neighbor. Mayor Klingmeyer is familiar with the internal layout of the building and said the drawing should have shown some of the interior spacing that would clearly indicate it would be consistent with the operation of the facility. He also agreed with the reasons stated by Messrs. Akin and Athey. The motion was approved by unanimous vote.

Mr. Athey suggested the club review existing fire exits, sprinklers, etc. because of the age of the building.

Mr. Taylor continued with item 6 concerning a proposed pavilion cover for two of the existing four bocce courts. There are regulations that specify the size of the bocce courts and in order to move the courts there would be a large expense and the club would also lose some parking area.

Mr. Ioannoni informed the Board that the bocce courts are used by members, a league and Special Olympics. A pavilion will be convenient during inclement weather

and will also help keep the sound level down. The club membership approved covering two of the courts. To cover all four would be too expensive and the club doesn't own all the property the courts are on. Covering all four courts would create a problem because the club does not own all of the property the courts are on. A portion of the number one court is on Mr. Susi's property and half is on club property. He provided a description of the pavilion.

Mr. Athey asked what the possibility would be of purchasing some of the Young Street right-of-way that they are currently encroaching on. Mr. Ioannoni said School Street will not work but there is a possibility for Young Street. He added that the Castillion Club has an access on one side and St. Anthony's maintains the area at no expense to the city. Mr. Athey said that if the city wanted to make the street a more useful city street, a bocce court wouldn't be too difficult to move but to move a pavilion would be more costly. He expressed concern with making the encumbrance tougher to remove in the future in a city right-of-way. *(Discussion followed.)*

Mr. Athey asked Mr. Akin if in the future the city needed to remove the pavilion, if this Board accepted that pavilion to be present is it then the city's responsibility to remove them? Mr. Akin is not sure that this Board has the legal authority to grant a private property owner the authority to construct anything of a permanent nature in a city right-of-way. *(Lengthy discussion followed about the survey, where the pavilion would be located, and zoning designation.)* Mayor Klingmeyer suggested moving the courts to the west and losing three or four parking spaces to the west to keep away from the street. Mr. Lewis Indellini, who is also a member of the club, expressed deep concerns about the pavilion being used by juveniles. The pavilion is in a secluded area and is open to anyone to use. He lives about 100 ft. directly east/northeast of the property.

Mr. DiAngelo said the alleys have existed for some time and as bocce grew bigger they added more alleys. He admitted they likely erred in putting some of the alleys on Young Street, but to remove them would be costly and to leave them will not hurt anything. *(He described the make-up and dimensions of a bocce court.)*
(A short recess was taken.)

Mr. Taylor asked to amend the application to say that with a zero foot setback, the club will not only make sure the supporting posts are within our property line, but will end the pavilion cover at the property line as well. If in the future the city would need to open Young Street to traffic it would be easier to remove approximately 4 ft. of the bocce surface than the pavilion. Mayor Klingmeyer asked about fencing in the area because of its accessibility. Mr. Taylor said they had not considered this. Mayor Klingmeyer expressed concern with taking beer to an area that isn't enclosed.

Mr. Ioannoni said drinking of alcoholic beverages at the bocce courts is not allowed. They have had lights and cameras installed and they police the area. He said they could put a fence up but it wouldn't add to the area.

Mr. Akin asked Mr. Ioannoni if the club is constructing the pavilion to provide protection from the weather for the players, wouldn't Mr. Taylor's amendment defeat part of the purpose because the pavilion will end before the court ends. Mr. Ioannoni did not feel that would be a problem. He added they would be willing to put up a bond. Mr. Akin again explained his multiple concerns with approving this application.

(Pitch of the roof was discussed.)

Additional pros and cons were presented to the Board. Public comments ended.

Mr. Taylor was invited to present final argument. They feel that literal interpretation of the code would be a hardship on the club and that they are willing to agree to conditions that with the approval of the zero variance setback that the posts and the roof overhang would not be off club property lines. They would also agree to the conditions of having video surveillance and posting a sign for same, acknowledging where the property line is. In the future if the club wants the club to remove the east ends of the bocce court it could be done.

No further questions were presented by Board members.

Mr. Akin made a motion to deny variance number 6 on the public notice dealing with the unopened area of Young Street and seeking a setback from that street of zero feet for the purpose of erecting a pavilion. Mr. Athey seconded the motion.

Mr. Akin stated that in modern zoning there is a reason for setbacks. He believes that while he does not know what the city's future needs would be for the Young Street right-of-way he does believe the Board is to consider that "the special condition and circumstances have resulted from actions of the applicant." The club determined to install these courts in the city's right-of-way. He is concerned that as City Solicitor and a member of this Board that any action approving the pavilion or the current location of the courts may be interpreted in the future as something binding on the city such that the city would have difficulty getting the applicants to move the eastern portions out of the street. Even if the applicants move the courts to the west so there is no encroachment, if Young Street were ever used for vehicular traffic you would have vehicles passing by an area with moving balls and children. He believes there is a special need for some setback in this case and if it means the club must move the court to the west, they chose the original location.

Mr. Athey stated he does not doubt the intent of what the club is trying to do. Special conditions and circumstances exist as a result of the applicant. The encroachment on a city right-of-way is very uncomfortable. Lastly, he feels there are alternatives such as moving the court and feels perhaps the city might be interested in selling or granting an easement on the Young Street right-of-way. He also raised the issue of injury on the city right-of-way that is in the club's use—who would be liable. He believes this could be cleaned up through proper legal action (buy the land, get an easement, or move the court).

Mayor Klingmeyer supports the motion based on the reasons specified by Messrs. Akin and Athey. He referred to pertinent provisions in the Zoning Code. The conditions the Board is required to see demonstrated is weak. Special conditions peculiar to a land structure are not applicable to other land structures in the district. He does not feel this is true. The literal interpretation of the provisions of the chapter would deprive the applicant rights commonly enjoyed by other property owners does not apply; special conditions/circumstances have resulted from actions of the applicant; the granted variance will not convey an applicant any special privilege denied

by this chapter or other lands or structures – it would be, other citizens are denied the right-of-way. The motion was passed by unanimous vote.

Mr. Taylor asked if the Board would consider another motion that the club shortens the courts to the property line so the encroachment issue would be eliminated.

Mr. Akin said that that amendment would still require granting a zero foot setback because your proposal would still have the eastern end of the courts butting against the Young Street right-of-way. Mr. Taylor agreed and said it is parkland at this time and they don't envision the city opening the street to vehicular traffic.

Mr. John Mark DiAngelo asked the Board to tell the club what they need to do. Mayor Klingmeyer reiterated the alternatives that Mr. Athey spoke of but indicated the Board can't suggest what they need to do. Mr. Akin added that there is a reason in the city's code for setbacks – it is to keep uses away from other uses on adjoining property. If the club is asking if there would be a problem moving the courts to the line of the Young Street right-of-way instead of the 20 feet required under city code and unless there is an indication of a problem with moving the courts further to the west he would be reluctant to grant a 100% variance on the required setback.

Mr. Taylor said they have heard some good suggestions as to how they might proceed and thanked the Board.

The hearing was adjourned at 8:55 p.m.

Respectfully submitted,

Debbie Turner
Stenographer

(Stenographer not in attendance at meeting; transcribed from recording.)